

## DON'T LET MOLD TURN INTO GOLD FOR CLAIMANTS

Eileen Barr, Claims Examiner

**M**old grows naturally in the environment, and until recently, was viewed as a minor nuisance. With the recent media focus on toxic molds and their possible connection to various respiratory problems and illnesses, publicity is generating a booming business for environmental hygienists and plaintiffs' attorneys. The media is not the cause of this problem. Improper cleaning and drying techniques after water intrusion are the culprits. Within a few days, wet building and furnishing materials provide the perfect medium for mold to grow and flourish. Once this occurs, it will add substantial time and expense to remediate the damaged property.



Clean up in process

### POTENTIAL HEALTH-RELATED IMPACTS

From the claims handling standpoint, the claim dollar amount is important: but the more important issue is the potential for health-related impacts that may result from exposure to mold. People sensitive to molds, along with those with compromised immune systems or lung disease, are most likely to react with cold or flu-like symptoms. *Cladosporium* and *Penicillium* may trigger these types of reactions in people sensitive to these common molds. *Stachybotrys chartarum*, the black mold that has received the most sensational publicity, under certain conditions produces mycotoxins that are reputed to cause serious health problems. Another mold, *Aspergillus flavus*, may produce aflatoxin, a very potent, naturally-occurring carcinogen. Both *Stachybotrys* and *Aspergillus* are also

believed to negatively impact the immune system, and may cause eye and skin irritation and chronic fatigue.

### HOW TO HANDLE

Due to the public's fear of mold infestation and the inconclusive data concerning mold exposure and possible health problems, it is extremely important to have professional restoration personnel test, clean, and dry the affected property areas. With claims involving significant sewage water intrusion or water from underground sources that may contain pesticides or chemicals, we routinely call in an industrial hygienist to develop the remediation scope. After clean up is completed, testing is then done again.



Room masked for clean up

While some common molds can be easily cleaned with household bleach, it takes professional testing to determine the type of mold involved and the appropriate clean up method.

The presence of *Stachybotrys chartarum* dictates the need for professional

cleaning. *The recommended methods of Stachybotrys chartarum removal are described on page 5.\**

Don't try to pinch pennies when water or sewer overflows happen. Inadequate cleaning and drying will cost much more in the final resolution of the claim. Call out professional restoration experts. Without proper clean up and drying, mold can easily turn into gold for claimants' attorneys.

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## Coverage Corner

An analysis of recent efforts to minimize risk and prevent losses

# AUTO INSURANCE Q&A

Marcus Beverly, PLAN Director

**DRIVE YOUR OWN CAR ON BUSINESS? DO YOU KNOW WHO'S PROVIDING THE INSURANCE? WHAT SHOULD EMPLOYEES DO IN CASE OF AN ACCIDENT?**



**Q:** Are member employees “insured” when driving their personal vehicles while in the course and scope of their employment?

**A:** The short answer is yes, but the employment coverage is excess over the employee’s own insurance.

“Insurance Follows the Car” - The California Insurance Code states that the policy which most specifically describes the vehicle being insured is considered primary, meaning the employee’s insurance policy would be first in line to pay any claims. The member’s coverage would apply only if the damages were severe enough to exhaust the limits of that policy. The city should be considered an “insured” and added to the employee’s policy. This is due to a clause in most insurance policies that states an insured includes “any other person or organization but only with respect to their liability due to your actions.”

This key provision of the insurance code, the “Insurance Follows the Car” rule, applies in every situation, not just for member claims. For example, if you loan your car to a friend who causes an accident, it is your insurance that will pay the claim. Though you, and even your friend, may want his or her insurance to pay the claim — it won’t happen!

At this point, the rental companies have the upper hand. Expect to report any claim to your own insurer for protection and they will sort out who will pay. If you don’t want to involve your own insurer, consider purchasing the coverage the rental company is sure to offer, though at the price they charge, it doesn’t make sense if you have the car for more than a day or two.

**Q:** What limit of insurance should I have or require?

**A:** As the burglar alarm ad asks, “What do you have to lose?” Your potential liability as a result of an auto accident is practically limitless; therefore, most people look to protecting their assets when deciding how much insurance to purchase. If you are 18, with no assets and little to spend on insurance, you might be tempted to purchase the state-required minimum of 15/30/5 (\$15,000 for Bodily Injury -BI- to any one person, \$30,000 for BI to all persons, and \$5,000 for all Property Damage arising from one accident). If you are 45, with a good job, family, house, and other assets, you shouldn’t consider anything less than 100/300/50. If you have significant assets, you should consider higher limits or the broader coverage of an “umbrella” policy for protection.

Limits of 100/300/50 are recommended member requirements for those employees who drive their personal cars as part of their employment. If you have an employee with lower limits, ask them to obtain a quote from their current or competing insurer. You may be surprised how little it costs to double or triple your limit.

**Q:** How can employees be sure they and their employer are covered?

**A:** Employees should check their policy or ask their agent whether they and their employer are covered while using their vehicle in the course of employment. Most “incidental” business use is covered, but if you’re driving a personal vehicle regularly to make deliveries or carry passengers, you may find your insurer denies the claim. Each insurer has their own guidelines for what they

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**Q:** What if they drive a rented or non-owned vehicle?

**A:** The same rule applies for non-owned autos — the owner’s insurance policy is primary.

For rental vehicles it’s a bit more difficult. The auto rental and insurance industries have been in court and the legislature for years to determine who has primary responsibility to pay claims.

*continued on page 3*

## IMPORTANCE OF TIMELY VEHICLE INSPECTIONS

Chantelle Coleman-Doan, Claims Examiner

**T**iming and accuracy are everything when inspecting vehicle damage. An inspection of vehicle damage immediately after an accident can reveal information which will assist in determining liability and help to control costs. The key element to insure the accuracy of an appraisal is timeliness. If the city appears to be partially or completely liable for a loss, authorization to hire an appraiser should be included with the claim submission. Hiring a vehicle appraiser ensures the claimant and/or city vehicle will be seen in 24 hours.

The appraiser will write an estimate, photograph the vehicle, and then determine what is new damage versus old and unrelated damage.

Obtaining detailed photographs will be especially helpful if someone was injured to provide clear documentation about how the loss occurred. The appraiser will then negotiate the estimate with the body shop.



Recent damage

If damage is questionable, appraisers will measure the height of the damage from ground up on both vehicles to verify the damage was caused in the collision. If the vehicle has moderate to major damage, the appraiser will wait to write the estimate until a tear down of the vehicle (removing panels to see the extent of the damage) is completed. If the vehicle is repairable, the appraiser will negotiate an agreed estimate price with the shop and determine the amount of loss of use based on the repair time listed on the estimate. If the vehicle is deemed a total loss, the actual cash value and the salvage amount will be determined. All information will be included in the report.

In summary, an appraiser will save the city time and costs. By expediting an appraisal on a damaged vehicle, immediate control of the claim is established. Our experience shows that the majority of appraisals reduce the total damages paid by more than the cost of the appraisal fee, making the appraisal an excellent claims management tool.

### Q&A continued from page 2

consider acceptable, and some non-standard policies restrict business use or who is considered an insured under the policy. In some cases the business use of the vehicle is declared on the policy and/or an additional premium is charged so there is no question of coverage.

**Q:** What should employees do in case of an accident?

**A:** Employees should report the claim to your insurance company and to the city. The insurance company should ask if the employee was driving in the course of employment or for anyone else. If not, it should be mentioned so the insurer will be aware they need to protect the city's interest and to notify the employee or the city should the claim exceed insurance limits.

The PLAN provides a driver kit which includes instructions and a detailed report form to gather critical information at the accident scene. Request one from your PLAN contact or go to our website at [www.abag.ca.gov/services/plan/resources](http://www.abag.ca.gov/services/plan/resources) and click on Auto Accident Report Kit.

Driving a personal vehicle in the course and scope of one's employment is a routine practice. However, many people do not realize they are providing insurance coverage for both themselves and their employer.

It's worth reviewing your policy to be sure you're purchasing adequate limits and to confirm you and your employer will be protected should you have a claim.

## Risk Management

An analysis of recent efforts to minimize risk and prevent losses

# MOLD REMEDIATION PROBLEMS

Jim S. Nagal, Claims Examiner

**M**oisture remediation claims provide a different set of issues of concern for risk managers. The following are some key factors identified from recent claims.

### TIMING

Timeliness in moisture remediation is of the utmost importance for controlling fungal growth after a water or sewage loss. Recently, a homeowner thought he had a leak pooling in his crawlspace. After the plumbing system was found to be sound, the PLAN member was notified of a possible leak and it was determined that the cause was a city water leak uphill from the residence. The leak was undiscovered for several months and the standing water had become fetid, causing elevated fungal growth in the crawlspace, HVAC system, flooring, and floor coverings.

### LOOK OUT FOR HEALTH ISSUES

PLAN members should be cognizant of fungal growth issues and impacts on individuals with health problems. With backflow incidents, let your examiner know if affected residents include infants, children, elderly, chemotherapy patients, and those with compromised immune systems. The aforementioned water leak claim affected a retired homeowner, undergoing skin grafts for burns. The hygienist took extra care to test the HVAC ducts, furnace and the doctor-prescribed, furnace air scrubber.

### RESEARCH THE RECORDS

City records may also reveal other sources of mold. A PLAN member reported several residential backflow incidents where the owners prematurely ordered a clean up and then did not file a claim. The remediation firm issued an activity report detailing the specific areas still requiring clean up and had the owner sign a waiver. But, because

no claim was filed, the incident and partial clean up may not have been reported to PLAN. The member should retain the reports in the event of future backflow incidents so the examiner can investigate old moisture and fungal growth damages.



Contaminated kitchen



Contaminated flooring

### EXAMINE NON-COMPLIANT IMPROVEMENTS

Problems arise when damages include illegal hookups and improvements. For example, a homeowner built an illegal apartment in his basement atop a floor drain that was not up to code. When a sewage backflow damaged the apartment, the PLAN member initiated the clean up for health reasons. The enclosed area had a strong aroma of mold and clean up demolition revealed fungal growth and wood rot from prior backflow episodes. The claimed damages for this illegal apartment were rejected.

### EXPECT THE UNEXPECTED

Sometimes prior or unrelated moisture intrusions are not discovered until well into remediation. In the aforementioned water leak claim, the crawlspace passed the hygienist's tests after proper drying and cleaning. The living quarters still had elevated fungal growth readings after three rounds of expanded cleaning. After minor demolition, the hygienist discovered that a rare fungal growth in a wall caused the elevated readings.

This maintenance-related growth was not loss related. Subsequently, the owner agreed to cover the necessary remediation and reconstruction costs himself.

PLAN members should be prepared to clean up quickly, watch for health-related issues, examine records, look for code issues (as described in the accompanying article), and expect the unexpected when handling moisture intrusion cases.

## IMPORTANCE OF IDENTIFYING NON-COMPLIANT CONDITIONS

Lori Hardacre, Claims Examiner

As many PLAN members know, making a prompt inspection at the site of a water break or sewer spill and meeting with the property owner(s) are the best steps to take to gain immediate control of the loss and to expedite resolution of the claim. Sometimes this prompt and thorough inspection of the property may also reveal conditions that may place some limits on the amount the city will pay in resolving the damage claim.

During a recent loss involving a break in a city water main, we found that two of the seven affected homes had construction in the garage/basement areas that were not in compliance with city codes. One homeowner had installed drywall to finish inside a garage partition to make a “bedroom” for her son. Another homeowner had partitioned off the back portion of the garage with a painted siding wall, a curtain on the window, and a small closet toilet. Even though the city inspector explained that the area would need to be removed since city ordinances are enacted for protection against fire and carbon monoxide hazards, the emotional impact of having to deconstruct this guest room was the resident’s overriding concern.

During the initial inspection of the damaged property, it is important for city personnel to alert the on-scene ABAG representative to the finding of any possible non-compliant conditions. For instance, if the incident had been caused by a spill from a toilet installed in the basement or from a driveway drain which connects directly

into the city sewer main, the property owner would need to be informed that the city will not make payment on a claim for any resulting damages since illegal conditions contributed to the occurrence. In a case where city liability is probable, but there is a non-compliant structure in the damaged area, we will inform the property owner that the city cannot include in the claim any payment to restore the non-compliant condition. In the home where the drywall had been installed within the “bedroom” space, we were required to include as part of the claim the cost to tear-out the bottom 12” of sheetrock saturated by water and mud. The homeowner was advised that we would not be able to include as a part of the claim settlement any cost to restore the sheetrock within that illegal space.

Getting a water or sewer damage claim resolved is generally a difficult process at best. The claimant’s feelings of surprise, shock, inconvenience, and anger must be handled even when the claim proceeds smoothly. When a condition is identified on the private property which may restrict the amount to be paid on the damage claim, or worse, means that damaged areas will need to be removed at the owner’s expense, the opportunities to let the claim get off-track are magnified. Despite the difficulties in dealing with an illegal condition, it is best to make everyone aware of the situation as soon as possible in order to get past that issue. Then you can focus the claimant on working toward resolution of the damages and settlement of the claim.

*Mold into Gold, continued from page 1*

### STACHYBOTRYS CHARTARUM CLEAN UP METHODS

#### \*1) Level I: The area of mold is 2 square feet or less.

A. The area can then be cleaned by individuals who have received training on proper clean up methods, protection, and potential health hazards. Gloves and a half- face respirator should be worn.

B. Contaminated material should be placed in a sealed plastic bag before taking it out of the building to prevent contamination of other parts of the building.

C. Surrounding areas should be cleaned with household bleach.

2) Level II: If the area of mold is more than 2 square feet, but less than 30 square feet, the recommendations are the same as Level I with the added precaution that moldy materials should be covered with plastic sheets and taped before any handling or removal is done.

3) Level III: If the area of mold is more than 30 square feet, personnel trained in handling of hazardous materials (such as asbestos) are necessary.

4) Level IV: If *Stachybotrys chartarum* is shown to be present in the heating, ventilation, or air conditioning system, recommendations are the same as Level III.

CA Department of Health Services, Environmental Health Investigations Branch, 1997

## Risk Briefs

A summary of risk management events & trends

# BE PREPARED WHEN THE POWER GOES OFF

How Planning Can Make It Less Risky

Will the lights go down in the cities and counties? What can be done to make it safer if the lights go off? Given the current state of the energy crisis and a potential for a warm summer's end and a hot fall, it is likely that brief rolling blackouts may occur. This creates a range of issues for risk managers to address from public sector buildings to city and county emergency services planning.

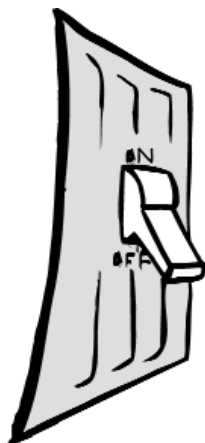
### COMMUNICATIONS

One resource is the outreach and public safety plan developed by the state Office of Emergency Services in conjunction with the Public Utilities Commission, utilities, and state and local public safety agencies.

The new energy emergency notification system, designed to provide participants with energy emergency information, was tested on May 24, 2001, to assess effectiveness and to provide a baseline to measure potential future conservation in public sector buildings. The system will be used to provide city and county participants with timely information regarding the status of energy supplies, the need for load shedding, and other emergency responses critical to specific regions throughout the state.

The following series of alerts will be issued to keep the public notified:

- **The rolling blackout alert** — 48 hours in advance, the Independent System Operator (ISO) will give Californians an "alert" if blackouts are likely to occur. The ISO will then post hourly updates for the public over the Internet ([www.caiso.com/awe/systemstatus.html](http://www.caiso.com/awe/systemstatus.html)), trigger the energy emergency notification system, and issue reports to the media.
- **Location notification** — 24 hours in advance, utilities will be required to identify the neighborhoods scheduled for blackouts.
- **Blackout warning** — at one hour prior to an actual blackout, utilities will provide a blackout warning, with the exact location and time of the impending blackout. Disseminating this information to affected homes and businesses is the next step.



### PUBLIC SAFETY AND SECURITY CONCERNS

Safety and security issues are primary concerns for cities and counties. Emergency services plans or disaster relief plans may address the issues that will affect communities. These plans should be reviewed and updated with specific attention paid to higher risk populations, traffic signals, evacuated buildings, and industrial facilities. Each of these may require additional public safety and/or emergency services personnel for an appropriate, timely response.

#### • At Risk Populations

Populations that are at a higher risk during a blackout include nursing homes and schools. The elderly, the disabled, and children have additional health issues, which may be triggered by heat or lack of energy. Nursing homes and schools have been required by the state to evaluate and develop appropriate measures.

#### • Traffic

Many traffic signals will be out during an outage, creating a need for drivers to proceed with caution on roadways and to treat intersections as four-way stops. Highly congested intersections may require staffing with traffic control personnel.

#### • Cleared Buildings

Evacuated public and private sector buildings may create security risks and will need to be

addressed in evacuation planning in conjunction with the local police.

#### • Industrial Facilities

Emergency services plans for local industrial facilities with the potential for hazardous materials releases should also be reviewed.

### FACILITIES CONCERNS

Advance warnings provide a window of opportunity to bring work to a temporary halt and conduct as-needed personnel evacuations. Most buildings have existing evacuation plans in case of fire, earthquakes, or other disasters. These plans can also be effective in case of power outages. Evaluating the evacuation plans is the first step in managing the risk factors involved.

*continued on page 7*

## *In My Opinion-* **CLAIMS HUMOR**

T.L. Hickman, Litigation Supervisor

**O**ccasionally, the claims anecdotes that float around on the internet actually started out with a basis in fact, but frequently more are urban legend than real. These claims, on the other hand, are directly from PLAN claim files. Welcome to our world.

### **PARTY CLAIM**

Neighbor calls 911 to report a young female calling for “Help!” Police respond to the residence and arrive just in time to see a male shutting and locking the front door. Police force entry and discover an unsupervised pool party in back. As police presence is made known, most of the partygoers start jumping over the fence rather than face questioning. Daughter (minor) at residence confirms she was yelling because she was afraid she was going to get tossed into pool. Parents file claim for damage to door. Claim rejected.

### **STREET CLAIM**

A woman twists her knee when she is almost hit by a passing car. She files a claim against the city because...it is a city street. Claim rejected.

### **COLD CLAIM**

There is a sewer back-up into a residence with a mother, daughter, and son-in-law living there. We mail a check as an advance payment for food allowance, out-of-pocket expenses, and hotel lodging for the three of them while repairs are underway. The son-in-law shortstops the check and takes the money. Thinking he can save a few bucks and that camping would be fun, he goes out and

buys camping equipment. Meanwhile, mom and daughter are staying with friends instead of going to a hotel. It’s cold outside. It’s certainly too cold for camping. He calls and admits that “I tried to scam you guys.”

### **FOOD CLAIM**

City receives a claim filed by a woman against the Police Department for failing to take action against a restaurant that tampered with food and made her sick. She alleged that the “green stuff” on her garlic bread was marijuana. Claim rejected.

### **TWO-RING CLAIM**

A woman’s son is arrested. She files a claim against the police for son’s rings allegedly lost while he was in custody. Son is arrested again for theft. Yet another claim for lost rings—the same ones. Turns out the father had retrieved the claimed items several months before the second claim was filed. Claim rejected.

### **BEAR CHASE CLAIM**

A dog, named “Bear,” escapes from a residence into the street just as a fire truck is passing by. Dog chases fire truck and catches it. Dog is injured and owner files a claim alleging that the fire truck induced the dog to chase it because it had its lights and siren activated (funny how that happens when there is a fire). Claim rejected.

### **CALM CLAIM**

Claimant is lying under tree in city park. He is getting ready to attend anger management class. City vehicle backs up and runs over him. (We suspect that this probably extended the length of his anger management sessions.) Claim not rejected.

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### *Blackout Preparation, continued from page 6*

Some necessary actions will depend on the type of building, like high rise buildings where the loss of elevator service affects planning more than a low-rise or mid-rise building. For all building types, a review of emergency supplies status and testing of backup generator sources is necessary.

Evacuation areas should be designated: they can be outside of the building or in an internal area with light and ventilation. In windowless buildings or large buildings, flashlights provide an additional level of safety.

Accessibility issues need to be addressed for accommodating employees and the public with mobility concerns. All of these factors can be identified and plans made to address potential problems before a power outage occurs.

Once the power outage alert is broadcast, staff can then shut down computers and other equipment such as copiers, fax machines, coffeemakers, and printers. This reduces the load on the system when power is restored.

## What's New

### MOLD REMEDIATION

Angela M. Salsbury, Claims Manager

**W**hat's behind the sudden mold epidemic?

The answer is both an increased awareness through media stories and also modern home design.

These designs include the materials used in synthetic stucco and the way insulation can trap moisture behind walls. Additionally, today's homes, like our office buildings, are constructed to be more airtight, and air-conditioning and heating systems re-circulate contaminated air. New homes are more prone to mold problems than older ones, but water intrusion in any home or business can cause a mold problem if not properly addressed.

Molds usually grow in damp places, behind walls and under floors, above ceiling tiles, or behind shower walls. Wherever there are wet cellulose materials that molds can feed on, such as wood, ceiling tiles, plasterboard, or an accumulation of organic material inside air-conditioning and heating systems, mold can grow. If water continues to sit and areas become completely saturated, a more lethal mold, such as *Stachybotrys*, can move in.

Four years ago in Cleveland, *Stachybotrys* growth from un-repaired storm damage was suspected of causing pulmonary hemorrhage in 14 children and killing two. According to California, ESQ Magazine, an estimated 2,000 plaintiffs are currently involved in pending toxic mold cases throughout California. Toxic mold involving a simple property loss can quickly turn into a high-stakes personal injury suit if not addressed properly.

Some ways members can protect themselves from lawsuits involving water intrusion claims:

- Do not have public works crews attempt to dry out the affected area or attempt to get rid of the mold. Once water has entered the sub-floors or walls, the areas need

to be tested for moisture.

- Have water intrusion claims, especially those involving sewage and water originating underground, remediated as soon as possible. ABAG PLAN or the public works department should call a remediation company immediately. If you need a referral, please contact our office. Our after hours number is 510-459-6642.
- An environmental consultant should be involved in water damage claims. They will determine the extent of the water intrusion by testing as well as developing the remediation company's scope of work.

ABAG PLAN examiners know the proper protocol for remediation. We are dedicated to ensuring that members do not face costly litigation for defense against mold related claims which can include diminution of value for the claimant's property, emotional distress, and/or mold-related illnesses.

## Calendar

### Strategic Planning Meeting

10/4 8 a.m.- 5 p.m.  
10/5 8 a.m.- 12 noon  
Toll House Hotel  
140 S. Santa Cruz Ave.  
Los Gatos

## PLAN MEETING SUMMARY

The PLAN held the 15th annual Board of Directors Meeting on May 15, 2001. Among the items approved by the Board:

- Over \$500,000 distributed in disbursable equity
- Over \$500,000 placed in our capital reserve fund
- Excess insurance to provide total limit of \$10 million and reduce our retention to \$5 million
- Strategic Planning review and meeting in October
- Risk Management training for Police
- Earthquake study for all insured buildings.



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